A.F.R.

01-08-2006.

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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ.
HON'BLE SHRI D.R. DESHMUKH, J.

Writ Petition No.4487 OF 2000

PETITIONER Anand Ram Tandan aged 34 years, S/o Diwalee ram, Constable No. 685/1193, Police Line, Durg.

Versus

RESPONDENTS

1. The State Govt. of C.G. Through The Secretary, Home Department, DKS Bhawan, Raipur (C.G.)
2. Inspector General of Police, Raipur (M.P.)
3. Distt. Superintendent of Police, Durg.

Present : Shri Ajay Shrivastava, learned counsel for the petitioner.
Shri Utkarsh Verma, learned Dy. G.A. for the State.

ORAL ORDER
(Passed on 01st August, 2006)

The following oral order of the Court was passed by

S.R. Nayak, CJ.

This writ petition arises out of the disciplinary proceedings initiated against the petitioner by the Superintendent of Police, Durg, district Durg, the 3rd respondent herein, under the provisions of M.P. Police Regulations (for short "the Regulations"). The petitioner, at the relevant point of time, was serving as Police Constable in the Police Department of the State. While serving, the petitioner was served with a charge memo and the charge framed against the petitioner reads thus:

> "विवाहिता पत्नि श्रीमती प्रमिला बाई निवासी सिलतरा के जीवित होते हुए एक अन्य महिला शांति बाई को पत्नि बनाकर रखकर मध्यप्रदेश सिविल सेवक आचरण नियम 1965 के नियम 22 (1) में दिये निहित प्रावधानों का उल्लंघन करना।"

(2) The 3rd respondent not being satisfied with the explanation of the petitioner conducted a regular departmental enquiry as required under the Regulations and found him guilty of the charge. Accordingly, the 3rd respondent by his order dated 31-10-1999 imposed the penalty of compulsory retirement on the petitioner as a disciplinary measure. The petitioner feeling aggrieved by the said order of the 3rd respondent preferred an administrative appeal to the Inspector General of Police, Raipur, the 2nd respondent herein. The 2nd respondent having examined the charge, the facts and circumstances of the case and the evidence on record, came to the conclusion that the charge was defectively framed against the petitioner-delinquent, that there is no legal evidence to substantiate the charge that the petitioner contracted the second marriage during the subsistence of the first marriage. In that view of the matter, the 2nd respondent by his order dated 04-02-2000 set aside the order of the 3rd respondent dated 31-10-1999. While doing so, the 2nd respondent, however, directed the 3rd respondent-disciplinary authority to proceed against the petitioner departmentally by framing appropriate charge. The 2nd respondent vide the same order also directed that the absence of the petitioner from the duty during the pendency of the disciplinary proceedings and after punishment was imposed on him till the appeal was decided be adjusted against the leave at his credit.

(3) It appears that as permitted by the 2nd respondent, the 3rd respondent again framed a fresh charge on 22-03-2000 and the same was served on the petitioner. The new charge framed against the petitioner reads thus:

"(1) विवाहित पत्नि श्रीमती प्रमिला बाई निवासी सिलतरा के जीवित होते हुए भी अन्य महिला शांति बाई के साथ सतत रूप से 05 (पांच) वर्षों से रहकर मध्यप्रदेश पुलिस रेग्यूलेशन के पैरा नंबर 64 की उप कंडिका (2). (3) में दिये गये सेवा शर्तों का उल्लंघन कर संदिग्ध आचरण प्रदर्शित करना।"

(4) In the meanwhile, the petitioner feeling aggrieved by the order of the 2nd respondent dated 04-02-2000 instituted Original Application No. 365 of 2000 before the Madhya Pradesh Administrative Tribunal, Raipur Bench (for short "the Tribunal") insofar as the 2nd respondent permitted launching departmental proceedings against him *de novo* and directed to adjust the period of absence of the petitioner against the leave at his credit. That Original Application was disposed of by the Tribunal by its order dated 02-05-2000 marked as Annexure P/1. The Tribunal has opined that the 2nd respondent has the power to direct *de novo* enquiry as provided under sub-Regulation (4) of Regulation 270 of the Regulations. With regard to the grievance of the petitioner in adjusting his period of absence against the leave at his credit, the Tribunal has observed that since the petitioner did not make any representation before the competent authority regarding his above grievance, there is no need for considering that grievance.

(5) In this writ petition, the petitioner has not only assailed the correctness of the order of the Tribunal dated 02-05-2000 but also questioned the legality of launching the second departmental enquiry vide charge memo dated 22-03-2000.

(6) On service of notice, a return dated 17-04-2001 was filed on behalf of the respondents.

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(7) We have heard learned counsel for the parties. Learned counsel for the petitioner would contend that the charge earlier framed and the charge now framed in the charge memo dated 22-03-2000 is substantially similar and therefore, the second charge memo is liable to be quashed. It was next contended by learned counsel for the petitioner that the 2nd respondent having set aside the order of the 3rd respondent on 31-10-1999 on valid grounds ought to have directed the 3rd respondent to reinstate the petitioner into service with all attendant benefits and advantages, pecuniary and otherwise, including back wages and refusal to do so is *ex facie* illegal. Learned Dy. Govt.Advocate, *per contra*, would submit that the power of the 2nd respondent to direct *de novo* enquiry could not be questioned because of the provisions of sub-Regulation (4) of Regulation 270 of the Regulations. He would submit that the petitioner though was guilty of serious misconduct for having kept mistress when the first marriage was in subsistence, the 2nd respondent set aside the punishment imposed by the 3rd respondent on a technical ground that proper charge was not framed and that circumstance would not enure to the benefit of the petitioner to claim back-wages at this stage particularly when fresh charge memo has been served on him and the departmental enquiry is in progress.

(8) Having heard learned counsel for the parties, we do not find merit in the first contention of learned counsel for the petitioner. Sub-Regulation (4) of Regulation 270 reads thus:

> "[1][(4) The revising authority may for reasons to be recorded in writing exonerate or may remit, vary or enhance the punishment imposed or may order a fresh enquiry or the taking of further evidence in the case:
>
> Provided that it shall not vary or reverse any order unless notice has been served on the parties

interested and opportunity given to them for being heard]."

In terms of sub-Regulation (4) of Regulation 270 of the Regulations, the power of the Revisional Authority to order a fresh enquiry can not be doubted. But, the contention of learned counsel for the petitioner is that the power to order a fresh enquiry is available only to the revising authority and not to an appellate authority like the 2nd respondent. It was pointed out that the 2nd respondent while disposing of the appeal has directed fresh enquiry and therefore, it is illegal. The above submission of learned counsel for the petitioner is not well-founded. When an order is the subject matter of appeal or revision or review ultimately what the appellate authority or reviewing authority or revisional authority does is reviewing the order impugned before it if there are permissible grounds are made out. Secondly, it needs to be noticed that it is well settled that the appellate authority can do itself what the original authority can do in law unless it is directed otherwise by law. Nobody can question the power of the disciplinary authority to abandon a charge already framed and to frame a correct charge and proceed against the delinquent departmentally. If the 3rd respondent himself could abandon the affective charge memo and frame appropriate charge against the delinquent and proceed against him departmentally, such power available to the disciplinary authority is also available to the appellate authority. Looking from any angle, the power of the 3rd respondent to direct fresh enquiry can not be doubted and in our considered opinion it was in order and legal.

(9) There is also no merit in the contention of learned counsel for the petitioner that the earlier charge and the charge now framed vide charge

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memo dated 22-03-2000 are identical. As could be seen from the charges extracted above, the earlier charge was that the petitioner during the subsistence of his first marriage with one Smt. Pramila Bai had kept another woman Shanti Bai, by name, as second wife, whereas, in the charge memo dated 22-03-2000 it is alleged that the petitioner during the subsistence of the first marriage has kept another woman Smt. Shanti Bai, by name, as his mistress for the last five years.

(10) We, however, find substance in the grievance of the petitioner that since the 2nd respondent has set aside the order made by the disciplinary authority dated 31-10-1999, he ought to have reinstated the petitioner into service and directed payment of back-wages and attendant benefits atleast till up to the order of the 2nd respondent i.e. 04-02-2000. As could be seen from the order of the 2nd respondent dated 04-02-2000, he has opined that framing of the charge itself is defective. The 2nd respondent has also opined that there is absolutely no legal evidence to substantiate the charge. If these are the findings of the 2nd respondent, it goes without saying that the delinquent is entitled to be reinstated into service with all attendant benefits, pecuniary or otherwise, unless it is shown that during the out of employment period, the petitioner-delinquent was gainfully employed elsewhere. That is not the case of the department. However, it needs to be noticed that since the 2nd respondent directed fresh enquiry and in pursuance of the same, a charge memo was issued to the petitioner on 22-03-2000, there is no necessity for us to deal with the question how the period between 04-02-2000 and 22-03-2000 should be treated. We leave that question to be decided by the department after conclusion of the departmental proceeding initiated against the petitioner in accordance with the relevant rules/regulations. But, the petitioner is

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entitled to back-wages for the period from 31-10-1999, the day on which the 3rd respondent imposed the penalty of compulsory retirement on the petitioner to 04-02-2000, the day on which the 2nd respondent-appellate authority set aside the order of the disciplinary authority.

(11) In the result and for the forgoing reasons, we dispose of the writ petition directing the respondents to pay back-wages to the petitioner for the period from 31st October, 1999 to 04th February, 2000 (both days inclusive). In the facts and circumstances of the case, the parties shall bear their respective costs in this writ petition.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge